

Members:
Rep. Mark Kruzan, Chair
Rep. John Frenz
Rep. Dale Sturtz
Rep. Luther Lutz
Rep. Richard Mangus
Rep. Thomas Saunders
Sen. James Merritt, V. Chair
Sen. Allen Paul
Sen. Becky Skillman
Sen. William Alexa
Sen. James Lewis
Sen. Timothy Lanane



INTERIM STUDY COMMITTEE ON STATE GOVERNMENT ISSUES

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Authority: Legislative Council Resolution 2-1998

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MEETING MINUTES

Meeting Date: October 6, 1998
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St.,
House Chambers
Meeting City: Indianapolis, Indiana
Meeting Number: 5

Members Present: Rep. Mark Kruzan, Chairperson; Rep. Dale Sturtz; Rep. Luther Lutz; Sen. James Merritt, Vice-Chairperson; Sen. Allen Paul; Sen. Becky Skillman; Sen. William Alexa; Sen. James Lewis.

Members Absent: Rep. John Frenz; Rep. Richard Mangus; Rep. Thomas Saunders; Sen. Timothy Lanane.

The meeting convened at 1:50 p.m.. Mr. Mitchell W. Pearlman, Executive Director of the Connecticut Freedom of Information Commission (FOIC) testified before the Committee.¹ Mr. Pearlman discussed how the FOIC adjudicates disputes under Connecticut's Freedom of Information Laws. He discussed the benefits of having case law from the FOIC to foster a better understanding of the law. He made the following points: (1) In order to avoid partisanship, the FOIC was not made a part of the attorney general's office. (2) The public access law should be kept simple, because it is primarily citizens that use it. (3) The FOIC receives 10,000 inquiries per year. Of the 400 to 600 formal cases filed, 200 to 300 cases go to formal adjudication and only 20 to 30 go to an appeal. (4) The FOIC has a total staff of fourteen people of which eight are lawyers. (5) The FOIC's estimated budget is between \$1 million and \$2 million per

¹A copy of Mr. Pearlman's statement is on file at the Legislative Information Center, Room 230, State House, Indianapolis, Indiana. The telephone number of the Legislative Information Center is (317) 232-9856, and the mailing address is 200 West Washington St., Suite 301, Indianapolis, Indiana 46204-2789.

year. He discussed New York's Committee for Open Government, which issues only advisory opinions.

Rep. Sturtz presented witnesses representing county sheriffs to testify on the issue of public records requests. Mr. Doug Dukes, Noble County Sheriff, testified that a newspaper article describing the treatment that a person received who requested records from the Noble County Sheriff's Office was inaccurate. Mr. Dukes informed the Committee that the requester was rude, parked in a reserved parking space, and had to be expelled from a secure area of the office. Since the request was made after hours, the requester was told to return in the morning to obtain the records. The newspaper article failed to mention that the person in fact received the records the next morning. He stated that he supports the public records law as it is currently written. Mr. Dukes also supports more education programs on the public access laws.

Mr. Mike Eslinger, Indiana Sheriff's Association (ISA), stated that the "human factor" is at work in public access requests; a person who exhibits common courtesy is more likely to receive cooperation from other people. He stated that sheriffs are protective of information (such as revealing the identity of victims) and can be sued if they release incorrect information. He supports more education on the public access laws. Mr. Eslinger informed the Committee that the ISA educates its members on the public access laws and acts in an advisory capacity to answer questions about compliance. He stated that the ISA supports the current law as written.

Sen. Alexa introduced a witness to testify about the cost and problems of the state adjudicative process.

Mr. Donald Lesch, Porter County, described for the Committee his struggle in challenging an emergency deerhunting permitting process of the Department of Natural Resources which allows no public input. He described for the Committee how he spent a year and \$12,000 in legal fees adjudicating with the agency the initial issue of standing. He indicated to the Committee that he spent \$65,000 in the second year of adjudication with the agency. He indicated that after three years of litigation, he has still not obtained any results. He made several recommendations to the Committee concerning the deerhunting permit process.

Rep. Kruzan indicated that Mr. Michael Lee Gradison indicated to the Committee that he wanted to elaborate on his testimony at the September 23, 1998 meeting of the Committee. Rep. Kruzan stated that Mr. Gradison's amendment would be included in the record of the minutes of this meeting.²

Rep. Kruzan indicated that he is talking to the Legislative Council about studying the proposal to record standing committee meetings of the General Assembly. Rep. Kruzan indicated that the Committee would now discuss the Preliminary Drafts.

Preliminary Draft (PD) 3270 concerns the procedures for changing a town to a city and for establishing a municipal utility service board.³ Ms. Tonya Galbraith, Indiana Association of Cities and Towns, explained to the the Committee that PD 3270 would eliminate the current provisions requiring a referendum to be conducted in such cases.

PD 3398 requires state agencies to provide electronic access to notices of public meetings and invitations to bid on contracts for public works and supplies. Rep.

²Mr. Gradison's statement is on file at the Legislative Information Center. (See footnote 1).

³Preliminary Draft 3270 is on file at the Legislative Information Center (See footnote 1).

Kruzan indicated that PD 3398 places in statute what is already required under Executive Order 98-26.⁴

PD 3424 makes the Office of Public Access Counselor statutory.⁵ Rep. Kruzan pointed out that the Counselor would serve a four year term that would overlap a governor's term. Rep. Kruzan pointed out that the draft outlines only the structure and not the procedure of filing a complaint. He indicated that the Counselor would only have the power to issue an advisory opinion, so the burden would remain on the citizen to take the matter to court in order to enforce the public access law. However, he indicated that the intent is to add "teeth" to the court procedure including: (1) requiring a court to expedite an open records or open meetings case; (2) requiring a court to award attorney's fees and costs to a citizen that prevails; and (3) creating sanctions to impose on a public agency for egregious violations. Sen. Alexa indicated that the creation of a Public Access Counselor was a good start. On the subject of the independence of the Public Access Counselor, Sen. Alexa asked how the Counselor would be funded. Rep. Kruzan indicated that the Counselor would be funded from the governor's budget. He stated that currently the Counselor's budget comes from the Commission on Public Records.

Sen. Merritt discussed how local officials are the stewards of public records and are responsible for caring for them. He stated that he supports more education about the public access laws for public officials. Sen. Merritt indicated that it was his intent that a letter from Mr. Peter Harstad, Executive Director of the Indiana Historical Society concerning the issue of creating a Department of Indiana Heritage be distributed to members. Rep. Kruzan indicated that staff should attach the letter to the minutes of this meeting.⁶ Sen. Merritt indicated that he might send out a draft on the Department of Heritage Issue or just seek input.

Rep. Kruzan indicated that he would receive testimony on PD 3424. Mr. Steve Key, Hoosier State Press Association, stated that if the Public Access Counselor has a fixed term of office of four years, the Counselor will be vulnerable to political change. He indicated that in Connecticut, the executive director of the Freedom of Information Commission can only be removed for cause. He stated that he would prefer allowing the Public Access Counselor to issue a binding opinion. Rep. Kruzan indicated that he believes the choice to be made is between a full commission or a public access counselor and court provisions with "teeth". Mr. Key stated that he believes it would be acceptable to make the Public Access Counselor a statutory position and to put "teeth" in the public access law. He supports a provision that allows a plaintiff to recoup attorney's fees and imposing a fine for certain violations of the public access laws.

PD 3397 concerning public records copying fees was discussed by the Committee.⁷ PD 3397 would specify that labor costs, overhead costs and profit are not included in "actual cost" for purposes of determining copying fees for local units of

⁴Preliminary Draft 3398 is on file at the Legislative Information Center (See footnote 1).

⁵Preliminary Draft 3424 is on file at the Legislative Information Center (See footnote 1).

⁶ The letter from Mr. Harstad is on file at the Legislative Information Center (See footnote 1).

⁷Preliminary Draft 3397 is on file at the Legislative Information Center (See footnote 1).

government. Mr. Steve Key, Hoosier State Press Association stated that he supported the language in PD 3397.

Mr. Charlie Hiltunen, Indiana Land Title Association, submitted recommendations to the Committee for amending the Indiana Public Records Act.⁸ Mr. Hiltunen addressed how title companies are charged both for putting the computer record system into the local agency and also charged for information. He submitted a letter from the Office of the Lake County Recorder which describes how office improvements are paid for from service fees collected primarily from corporations.⁹ Mr. Hiltunen pointed out that if the statute is amended in the open records law concerning copy fees, the county recorder statute that sets a fee for copies must also be amended to achieve consistency.

Mr. Clark Kahlo, FOIndiana, stated that his organization will meet and discuss the various proposals.

Ms. Wendy Brandt, FOIndiana, discussed PD 3396, which would make numerous changes in the public access laws, and indicated that the provision on page 3, line 33 of PD 3396 could be inconsistent with zoning law which requires a member of the zoning body to be present to vote. Ms. Brandt then discussed various problems she perceives in the existing public records law. She stated that the disclosure exception for attorney work product and interagency and intragency deliberative material is often used to shut out the public.

Mr. Mike Roeder, Indiana Association of Cities and Towns, made the following comments about PD 3396: (1) Page 1, line 29-31: This provision is too broad and could include contractors and law firms; (2) Page 5, line 3-10: The language concerning administrative functions should not be struck. This provision was put in for towns which do not have a mayor, so the town board has to meet in order to deal with administrative matters; (3) Page 13, line 34-41: This provision adds an unnecessary step of placing in writing an approval of a request for inspection and copying.

Ms. Lisa Tanselle, Indiana School Boards Association (ISBA), submitted written testimony from Roger W. Thornton, Indiana Association of Public School Superintendents.¹⁰ Ms. Tanselle made the following comments about PD 3396: (1) Page 1, line 29-31 and Page 7: The ISBA objects to this language concerning a public or private entity; (2) Page 2, lines 18-31: The ISBA objects to this language because the intent of one member could affect the entire board. (3) Page 9, line 32-36 could require to the agency to redact information; (4) Page 13, lines 34-41: This requires a public agency to estimate the time frame for fulfilling a request could lead to litigation over an agency's proposed time frame.

Written testimony was submitted to the Committee by Dave Bane, Stallard & Schuh, Inc.¹¹

Rep. Kruzan stated that the Committee will prepare drafts for the next meeting

⁸A copy of Mr. Hiltunen's recommendations are on file at the Legislative Information Center (See footnote 1).

⁹A copy of the letter is on file at the Legislative Information Center (See footnote 1).

¹⁰A copy of the testimony is on file at the Legislative Information Center (See footnote 1).

¹¹ Mr. Bane's testimony is on file at the Legislative Information Center (See footnote 1).

as soon as possible. He stated that hopefully the Committee will be able to act on the drafts at the October 20, 1998 meeting. The meeting adjourned at 4:10 p.m..